

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.** See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

**FILED BY CLERK**  
**JULY -8 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2009-0073-PR
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
BRUCE D. HOFFMAN,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20020449

Honorable Robert Duber II, Judge

REVIEW GRANTED; RELIEF DENIED

Bruce D. Hoffman

Florence  
In Propria Persona

B R A M M E R, Judge.

¶1 Pursuant to a plea agreement containing a stipulated, aggravated term of imprisonment, petitioner Bruce Hoffman was convicted of attempted sexual conduct with a

minor, a dangerous crime against children; sexual abuse; and sexual conduct with a minor. In September 2003, after finding a sufficient factual basis for the plea and that aggravating circumstances existed, the trial court accepted the plea and imposed concurrent, aggravated prison terms for the sexual abuse and sexual conduct offenses, the longest of which was seven years, and placed Hoffman on lifetime probation for his conviction for attempted sexual conduct with a minor.

¶2 Hoffman seeks review of the trial court’s order that implicitly dismissed the second petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. Hoffman had commenced his first, of-right Rule 32 proceeding by timely filing a notice of post-conviction relief in December 2003. But he apparently abandoned that proceeding, failing to file a petition within sixty days of receiving transcripts of the plea proceedings or to seek any extension of that deadline, in violation of the court’s order and Rule 32.4(c)(2) and (d). Hoffman then filed a petition for post-conviction relief in June 2006, more than two years after it had been due. The court denied relief and, on review, we found no abuse of discretion in the court’s finding Hoffman’s petition was untimely filed and denying relief on that ground. *State v. Hoffman*, No. 2 CA-CR 2006-0356-PR (memorandum decision filed Apr. 19, 2007); *see also State v. Carriger*, 143 Ariz. 142, 146, 692 P.2d 991, 995 (1984) (“Failure to comply with Rule 32 procedure will result in a finding that petitioner waived his right to present a Rule 32 petition.”); accordingly, “[p]etitioners must strictly comply with

Rule 32 or be denied relief”). Our supreme court denied review of that decision, and we issued our mandate in September 2007.

¶3 Without first filing the notice required by Rule 32.4(a), Hoffman filed a successive pro se petition for post-conviction relief in September 2008. The trial court apparently construed that petition as encompassing a notice of post-conviction relief, and we will do the same.

¶4 In that most recent petition and supplemental petition for post-conviction relief, Hoffman argued the trial court had erred in enforcing the provision of the plea agreement that treated attempted sexual conduct with a minor as a dangerous crime against children because, he asserted, that crime “is not clearly defined” in A.R.S. § 13-604.01<sup>1</sup> and because the age of the victim had not been established during his change-of-plea or sentencing hearings. He also argued the trial court had erred in imposing the aggravated terms of imprisonment as specified in the plea agreement because the judge, rather than a jury, had found the aggravating circumstances required to impose those sentences and that this violated the rule announced in *Blakely v. Washington*, 542 U.S. 296, 301 (2004). Finally, he asserted his trial counsel had been ineffective in failing to raise these claims before he was sentenced.

¶5 The trial court found Hoffman’s claims were either precluded or lacked merit. *See* Ariz. R. Crim. P. 32.2(a), 32.4(a). The court stated, “Specifically, the Court finds that

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<sup>1</sup>Section 13-604.01 has been amended and renumbered as § 13-705, effective January 1, 2009. *See* 2008 Ariz. Sess. Laws., ch. 301, §§ 17, 29. We refer to the version of the statute in effect at the time of Hoffman’s offenses. *See* 1999 Ariz. Sess. Laws, ch. 261, § 6.

[Hoffman] failed to explain why the issues were not raised in an earlier Petition for Post Conviction Relief and, furthermore, the legal principles set forth in *Apprendi* [*v. New Jersey*, 530 U.S. 466, 490 (2000), and] *Blakely* are not retroactive to [his] conviction[s].”

¶6 In his petition for review of the trial court’s decision, Hoffman asserts the trial court erred, and therefore abused its discretion, in finding his claims were either precluded or lacking in merit. But he fails to explain how the court erred in finding his claims precluded; nor does he challenge the court’s ruling on his claim for ineffective assistance of counsel. Rule 32.9(c)(1) requires that a petition for review contain the facts material to any issues decided by the trial court that the defendant presents for our review, as well as the reasons relief should be granted on those issues. Although Hoffman refers generally to the claims he asserted in his post-conviction relief petition below, this is insufficient to present those issues for our review. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv) (“The petition shall not incorporate any document by reference, except . . . appendices.”); *cf. State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) (failure to develop argument on appeal results in waiver; “Merely mentioning an argument is not enough . . .”).

¶7 In particular, Hoffman has not addressed the trial court’s finding that he failed to explain why his claims were raised in a successive and untimely petition. *See* Ariz. R. Crim. P. 32.2(b) (court shall summarily dismiss successive or untimely notice of post-conviction relief that fails to “set forth the substance of the specific exception [to preclusion] and the reasons for not raising the claim in the previous petition or in a timely

manner”). The trial court found Hoffman failed to provide the explanation required by Rule 32.2(b) in either a notice of post-conviction relief, which he did not file, or in his successive petition. Hoffman does not dispute this finding on review or state why he believes the court erred in denying relief on that ground.

¶8 Thus, Hoffman has not addressed, much less established, how the trial court abused its discretion in denying relief in a Rule 32 proceeding that was subject to dismissal pursuant to Rule 32.2(b). Accordingly, although we grant review, we deny relief.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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GARYE L. VÁSQUEZ, Judge

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JOSEPH W. HOWARD, Chief Judge